

**Background:** In the shift from the Michigan Single Business Tax to the new Michigan Business Tax (MBT) in late 2007, a new tax subdivision was formed for Michigan Depository Financial Institutions: a tax based on the capital of the banking institution. The goal of this tax was in line with the goals of the MBT generally:

1. Reduce tax complexity
2. Enhance clarity for all filers
3. Restrict tax filers' ability to reduce the tax via management strategies
4. Replace credits, exemptions and special tax reductions for some filers in the group with a reduction in the tax rate to all filers in the group

In the ensuing years the goals of the MBT Financial Institutions Tax (FIT) have not been reached. The haste in the legislative construction of the MBT and the subsequent interpretation and application of the Michigan Treasuries administration of the tax has made the FIT more complex and less clear. This has created needless miscommunications, non-fruitful audits and improperly allocated State human resources. The FIT (the MBT form) was retained in the shift to the new Michigan Corporate Income Tax.

The Michigan Bankers Association has conducted extensive meetings with management of Michigan Treasury outlining the various tax compliance issues for a period of 18 months. Some problems are administrative interpretations that find none in Treasury management capable of officially clarifying. In other cases there exists lack of clarity in the original statute and Treasury states that new language would be required as a confusion solver. Treasury has reviewed the Michigan Bankers Association claims and has discussed curative measures. Michigan Treasury remained pensive and non-committal, although a recent 9-23-2013 Treasury Notice provides some clarification

The Michigan Bankers Association restricts this bill to only those items wherein very serious and focused communication has developed with Michigan Treasury. There are no issues that will surprise Treasury officials. There have been a variety of solutions considered by Treasury Tax Administration and Tax Policy Divisions.

The Michigan Bankers Associations legislative clarification remains the direction required. These solutions are presented as Senate Bill 516, submitted for consideration by Senator Booher.

1. **Clarify the Tax Base.** As the Financial Institutions Tax emerged from Treasury in 2007, it was from initiation a hybrid of the MBT and not a separate tax. Treasury attempted to utilize the forms for all businesses and wedge into the form's structure a different tax on bank's capital. Treasury, unfamiliar with Federally Regulated Depository Institutions and National/International Accounting rules, generally developed ill-formed and poor initial opinions and practices. These initial opinions became sanctified by repetition. Michigan

Treasury has attempted to establish a Michigan Treasury definition of bank capital. **The MBA asks to return to establishing the tax base as federally reported capital required by GAAP rules.**

The Federal government polices the statement of capital and judges a bank's retention of charter and ability to continue operations based on the capital of a banking institution. This is a publically available report. It is patrolled by the U.S. Treasury, FDIC, Federal Reserve, State Banking Commission, and Securities and Exchange Commission. Failure to properly record and report a financial institution results in civil money penalties, incarceration or loss of the banking charter. The capital reported to the U.S. agencies is solid and is developed uniformly by all tax filers and understood by all Bank Regulators.

2. **Eliminate Tax Base Averaging.** In 2007 Treasury introduced to the FIT the concept of tax base averaging. The five-year averaging was to provide a shock absorber effect to rapid increases in capital tax base in the instances of rapidly rising or falling bank capital. The period of 2007-2011 is a period of rapidly falling tax base. Banks in this period provide consistent tax revenue to the state. As the capital is improving in all Michigan banks the tax base will rise more slowly as the tax is an average of five years of capital. This is a benefit for tax filer in certain years and the state in other years. However, there are many examples of the additions of new entities and the dissolution of subs or affiliates that have created grave concerns to the value of this tax revenue shock absorber. As banks acquire other banks Treasury is confused as to the capital of the pre-merger years. Treasury also has expressed confusion when entities are absorbed into the parent entity that the capital associated with the entity has vanished. **Eliminating this averaging will eliminate this confusion and litigation that is arising from these challenges.**

Note: Eliminating this averaging during the current period of increasing capital required by US Regulators, US Accounting Rules and Basel III international accords on the safety and soundness of international banking will mean this is a de facto immediate tax increase on every surviving depository bank in Michigan. This immediate tax increase is a price the bankers are willing to concede to eliminate the confusion and the potential foul ups in the administration of this tax. Also the Treasury officials have asked that the bankers fund the administrative changes required by this entire bill's clarity.

3. **Clarify Water's Edge for All.** Lastly, the Michigan Business Tax and successor CIT is a water's edge tax. Michigan does not tax foreign operations and profits thereof. However the basic filing forms of the FIT taxes foreign operations capital. The Michigan Bankers Association asks for clarity and consistency in the tax treatment of all tax filers Bank and non-Bank operations with international operations. The Michigan Bankers Association also suggest there should be protections required in the Michigan tax code to protect the State from tax manipulation by banking institutions that could shelter bank capital in an overseas operation to escape Michigan tax liability. These changes in providing a regulatory cap on

foreign capital and changes in the apportionment factor halt banks from off-shoring capital for reductions in tax liability.

**The Michigan Bankers Association seeks clarity and fairness.** There have been needless confusions and audits. There are developing litigations and administrative burdens for Treasury and tax filer alike. The bill provided has no surprises to Treasury. They may or may not greet these changes with accommodation.